

1978—Pub. L. 95-485, title IV, §404(b), title VIII, §804(b)(2), Oct. 20, 1978, 92 Stat. 1615, 1621, substituted “on duty” for “on sea duty or duty” in item 305, and added items 305a and 308c.

1977—Pub. L. 95-79, title IV, §403(a)(2), July 30, 1977, 91 Stat. 331, added item 308b.

1976—Pub. L. 94-356, §3, July 12, 1976, 90 Stat. 901, added items 312b and 312c.

1974—Pub. L. 93-294, §2(3), May 31, 1974, 88 Stat. 177, added item 301a.

Pub. L. 93-274, §1(1), (2), (4), May 6, 1974, 88 Stat. 94, 95, substituted “physicians” for “physicians and dentists” in item 302, and added items 302b and 313.

1972—Pub. L. 92-581, §1(1), (4), Oct. 27, 1972, 86 Stat. 1277, 1278, struck out “submarine” in item 312, and added item 312a.

1971—Pub. L. 92-129, title II, §§202(b), 203(b), Sept. 28, 1971, 85 Stat. 358, added items 302a and 308a.

1969—Pub. L. 91-20, §1(2), June 3, 1969, 83 Stat. 13, added item 312.

1967—Pub. L. 90-207, §1(2)(B), Dec. 16, 1967, 81 Stat. 651, added item 311.

1963—Pub. L. 88-132, §§9(a)(2), 12(c), Oct. 2, 1963, 77 Stat. 216, 218, substituted “while on sea duty or duty at certain places” for “sea and foreign duty” in item 305, and added item 310.

#### CROSS REFERENCES

Assimilation of pay and allowances, see section 1003 of this title.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 907, 1003 of this title; title 42 sections 210, 254d.

### § 301. Incentive pay: hazardous duty

(a) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to incentive pay, in the amount set forth in subsection (b) or (c), for the performance of hazardous duty required by orders. In this subsection, the term “hazardous duty” means duty—

(1) involving frequent and regular participation in aerial flight as a crew member, as determined by the Secretary concerned, except for a member who is entitled to incentive pay under section 301a of this title;

(2) involving frequent and regular participation in aerial flight, not as a crew member under clause (1);

(3) involving parachute jumping as an essential part of military duty;

(4) involving the demolition of explosives as a primary duty, including training for that duty;

(5) inside a high- or low-pressure chamber;

(6) as a human acceleration or deceleration experimental subject;

(7) as a human test subject in thermal stress experiments;

(8) involving frequent and regular participation in flight operations on the flight deck of an aircraft carrier or of a ship other than an aircraft carrier from which aircraft are launched;

(9) involving frequent and regular exposure to highly toxic pesticides or involving labora-

tory work that utilizes live dangerous viruses or bacteria;

(10) involving (A) the servicing of aircraft or missiles with highly toxic fuels or propellants, (B) the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used, or (C) the handling of chemical munitions (or components of such munitions); or

(11) involving frequent and regular participation in aerial flight by an officer (other than a warrant officer) who is serving as an air weapons controller crew member (as defined by the Secretary concerned) aboard an airborne warning and control system aircraft (as designated by such Secretary) and who is not entitled to incentive pay under section 301a of this title.

(b) For the performance of hazardous duty described in clause (1) of subsection (a), a member is entitled to monthly incentive pay as follows:

Pay Grade	Monthly Rate
O-10 .....	\$110
O-9 .....	110
O-8 .....	110
O-7 .....	110
O-6 .....	250
O-5 .....	250
O-4 .....	225
O-3 .....	175
O-2 .....	150
O-1 .....	125
W-5 .....	250
W-4 .....	250
W-3 .....	175
W-2 .....	150
W-1 .....	125
E-9 .....	200
E-8 .....	200
E-7 .....	200
E-6 .....	175
E-5 .....	150
E-4 .....	125
E-3 .....	110
E-2 .....	110
E-1 .....	110

(c)(1) For the performance of hazardous duty described in clauses (2) through (10) of subsection (a), a member is entitled to \$110 a month. However, a member performing hazardous duty described in clause (3) of that subsection who also performs as an essential part of such duty parachute jumping in military free fall operations involving parachute deployment by the jumper without the use of a static line is entitled to \$165 a month.

(2)(A) For the performance of hazardous duty described in clause (11) of subsection (a), an officer is entitled to monthly incentive pay based upon his years of service as an air weapons controller as follows:

Pay grade	Years of service as an air weapons controller							
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
O-7 and above .....	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200
O-6 .....	225	250	300	325	350	350	350	350

Pay grade	Years of service as an air weapons controller							
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
O-5 .....	200	250	300	325	350	350	350	350
O-4 .....	175	225	275	300	350	350	350	350
O-3 .....	125	156	188	206	350	350	350	350
O-2 .....	125	156	188	206	250	300	300	300
O-1 .....	125	156	188	206	250	250	250	250
O-7 and above .....	\$200	\$200	\$200	\$200	\$200	\$200	\$110	
O-6 .....	350	350	350	300	250	250	225	
O-5 .....	350	350	350	300	250	250	225	
O-4 .....	350	350	350	300	250	250	225	
O-3 .....	350	350	300	275	250	225	200	
O-2 .....	300	300	275	245	210	200	180	
O-1 .....	250	250	245	210	200	180	150	

(B) For purposes of this paragraph, the years of service of an officer as an air weapons controller shall be computed, under regulations prescribed by the Secretary concerned, from the date the officer begins training leading to a designation as an air weapons controller, but there shall be excluded from such computation any period of more than 90 days during which the officer performs primary duties other than as an air weapons controller.

(d) In time of war, the President may suspend the payment of incentive pay for any hazardous duty described in subsection (a).

(e) A member is entitled to not more than two payments of incentive pay, authorized by this section, for a period of time during which he qualifies for more than one payment of that pay.

(f)(1) Under regulations prescribed by the President and to the extent provided for by appropriations, when a member of a reserve component of a uniformed service, or of the National Guard, who is entitled to compensation under section 206 of this title, performs, under orders, any duty described in subsection (a) for members entitled to basic pay, he is entitled to an increase in compensation equal to  $\frac{1}{30}$  of the monthly incentive pay authorized by subsection (b) or (c), as the case may be, for the performance of that hazardous duty by a member of a corresponding grade who is entitled to basic pay. He is entitled to the increase for as long as he is qualified for it, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours, including that performed on a Sunday or holiday, or for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe under section 206(a) of this title. This subsection does not apply to a member who is entitled to basic pay under section 204 of this title for the entire month.

(2)(A) If in any calendar month a member performs duty as described in paragraph (1) and while entitled to basic pay also performs hazardous duty as described in the same clause of subsection (a) as constitutes the predicate for his entitlement under paragraph (1), the earned units of measuring entitlement for incentive pay under this section shall be combined. If the sum of units determined under the preceding sentence equals or exceeds the minimum standard prescribed by the President for entitlement to pay specified under subsections (b) and (c) for

a member of corresponding grade who is entitled to basic pay for the entire relevant month, the member shall be entitled to an increase in compensation equal to  $\frac{1}{30}$  of the monthly incentive pay authorized by subsection (b) or (c) for the performance of that hazardous duty by a member of corresponding grade who is entitled to basic pay for the entire month.

(B) A member who qualifies for entitlement under this paragraph is entitled to the increase for each day in the relevant month in which he is entitled to basic pay pursuant to section 204 of this title or to compensation under section 206 of this title.

(C) In this paragraph, the term,<sup>1</sup> “units” means the significant increments of performance prescribed as qualifying standards in regulations promulgated by the President pursuant to this section.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 461; Pub. L. 88-132, §§6-8, Oct. 2, 1963, 77 Stat. 215, 216; Pub. L. 89-149, §§1-3, Aug. 28, 1965, 79 Stat. 585; Pub. L. 89-278, Oct. 20, 1965, 79 Stat. 1011; Pub. L. 89-718, §52, Nov. 2, 1966, 80 Stat. 1121; Pub. L. 92-436, title VI, §605, Sept. 26, 1972, 86 Stat. 740; Pub. L. 93-294, §2(1), (2), May 31, 1974, 88 Stat. 177; Pub. L. 96-343, §2(a), Sept. 8, 1980, 94 Stat. 1123; Pub. L. 96-513, title V, §516(5), Dec. 12, 1980, 94 Stat. 2938; Pub. L. 96-579, §3(a)-(c), Dec. 23, 1980, 94 Stat. 3360; Pub. L. 97-60, title I, §111(a)-(c), Oct. 14, 1981, 95 Stat. 992, 993; Pub. L. 98-94, title IX, §903(a), Sept. 24, 1983, 97 Stat. 635; Pub. L. 98-525, title VI, §624(a), Oct. 19, 1984, 98 Stat. 2542; Pub. L. 99-145, title VI, §§635(a), 647(a), title XIII, §1303(b)(2), Nov. 8, 1985, 99 Stat. 647, 655, 740; Pub. L. 99-661, div. A, title XIII, §1342(a), Nov. 14, 1986, 100 Stat. 3991; Pub. L. 100-26, §8(d)(1), (e)(2), Apr. 21, 1987, 101 Stat. 285, 286; Pub. L. 102-25, title VII, §702(b)(1), (2), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 102-190, div. A, title VI, §614, title XI, §1111(d)(1), Dec. 5, 1991, 105 Stat. 1377, 1492.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
301(a) .....	37:235(a).	Feb. 18, 1946, ch. 30 (1st proviso under “General Provision”), 60 Stat. 20.
301(b) .....	37:235(b).	
301(c) .....	37:235(c).	

<sup>1</sup> So in original. The comma probably should not appear.

## HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U.S. Code)	Source (Statutes at Large)
301(d) .....	37:235(d).	Oct. 12, 1949, ch. 681,
301(e) .....	37:235(e).	§§ 204, 501(d), (e) (as applicable to incentive pay), 63 Stat. 809, 826, 827; Mar. 31, 1955, ch. 20, § 2(4)-(7), 69 Stat. 19-21; Aug. 28, 1957, Pub. L. 85-208, 71 Stat. 484; May 20, 1958, Pub. L. 85-422, § 1(6), 72 Stat. 124; June 30, 1960, Pub. L. 86-559, § 8, 74 Stat. 282; July 12, 1960, Pub. L. 86-635, 74 Stat. 469; Aug. 17, 1961, Pub. L. 87-145, § 2, 3, 75 Stat. 382.
301(f) .....	37:301(d).	
	37:301(e) (as applicable to incentive pay).	
301(g).	37:118a-1.	

In subsection (a), the words “is also entitled” are substituted for the words “shall, in addition thereto, be entitled”. The words “For the purposes of this subsection” are inserted for clarity. The word “competent” is omitted as surplusage.

In subsection (b), the words preceding the tables are substituted for section 235(b) (words preceding tables) of existing title 37. The words “Years of service computed under section 205” are inserted in the tables for clarity.

In subsection (f), the words “a member of a reserve component of a uniformed service, or of the National Guard” are substituted for the enumeration of the organizations concerned in section 301(d) of existing title 37. The words “when . . . performs, under orders, any duty described in subsection (a)(1)-(11) for members entitled to basic pay” are substituted for the words “when required by competent orders to perform any hazardous duty prescribed by or pursuant to section 235 of this title for members of the uniformed services entitled to receive basic pay and when in consequence of such orders they do perform any hazardous duty so prescribed”. The last sentence is substituted for section 301(e) (as applicable to (d)) of existing title 37.

In subsection (g), the words “entitled to incentive pay under section 301(a)(1) of this title” are substituted for the words “flight pay”. At the time of the enactment of the source statute, additional pay was authorized as “flight pay”. However, the Career Compensation Act of 1949 did not authorize “flight pay” but provided incentive pay in section 204(a)(1) [now section 301(a)(1) of this revised title] for “duty as a crew member . . . involving frequent and regular participation in aerial flight”. The words “before January 2 of each year” are substituted for the words “On or before January 1, annually”. The word “grade” is substituted for the word “rank” to conform to the definition in section 101(15) of this revised title.

## AMENDMENTS

1991—Pub. L. 102-25 struck out “of this section” and “of this subsection” wherever appearing.

Subsec. (b). Pub. L. 102-190, § 1111(d)(1), in table inserted provisions relating to pay grade of W-5, compensable at monthly rate of \$250, below item relating to pay grade O-1.

Subsec. (c)(1). Pub. L. 102-190, § 614, substituted “in military free fall operations involving parachute deployment by the jumper without the use of a static line” for “at a high altitude with a low opening”.

1987—Subsec. (a). Pub. L. 100-26, § 8(e)(2)(A), substituted “In this subsection, the term” for “For the purposes of this subsection.”.

Subsec. (b). Pub. L. 100-26, § 8(d)(1), which directed that subsec. (b) be amended by substituting “Monthly Rate” for “Monthly rate” wherever appearing, could not be executed, because in the one place where the words appear, both words were already capitalized.

Subsec. (f)(2)(C). Pub. L. 100-26, § 8(e)(2)(B), substituted “paragraph, the term” for “paragraph”.

1986—Subsec. (a)(1). Pub. L. 99-661 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “as a crew member, as determined by the Secretary concerned, involving frequent and regular participation in aerial flight;”.

1985—Subsec. (a)(1). Pub. L. 99-145, § 635(a)(1)(A), substituted “a crew member” for “an enlisted crew member”.

Subsec. (a)(10). Pub. L. 99-145, § 635(a)(1)(B), in amending cl. (10) generally, designated existing provisions as cls. (A) and (B) and added cl. (C).

Subsec. (b). Pub. L. 99-145, § 635(a)(2), amended table generally, striking out differentiation in pay rates based upon years of service and reflect an upward adjustment in the monthly incentive pay with respect to pay grades E-9 through E-1, and inserted provisions relating to monthly incentive pay for pay grades O-10 through O-1 and W-4 through W-1, respectively.

Subsec. (c)(1). Pub. L. 99-145, § 1303(b)(2), directed the substitution of “(10),” for “(10),.”. See amendment note below.

Pub. L. 99-145, § 635(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For the performance of the hazardous duty described in clause (2), (3), (4), (5), (6), (7), (8), (9), or (10), of subsection (a) of this section, an officer is entitled to \$110 a month and an enlisted member is entitled to \$83 a month.”

Subsec. (f). Pub. L. 99-145, § 647(a), designated existing provisions as par. (1), inserted “for the entire month” after “section 204 of this title”, and added par. (2).

1984—Subsec. (a)(3). Pub. L. 98-525, § 624(a)(1), redesignated cl. (4) as (3). Former cl. (3), relating to duty involving frequent and regular participation in glider flights, was struck out.

Subsec. (a)(4). Pub. L. 98-525, § 624(a)(1), redesignated cl. (6) as (4). Former cl. (4) redesignated (3).

Subsec. (a)(5). Pub. L. 98-525, § 624(a)(1), redesignated cl. (7) as (5). Former cl. (5), relating to duty involving intimate contact with persons afflicted with leprosy, was struck out.

Subsec. (a)(6) to (13). Pub. L. 98-525, § 624(a)(1), redesignated cls. (8) to (13) as (6) to (11), respectively.

Subsec. (c)(1). Pub. L. 98-525, § 624(a)(2), substituted “or (10),” for “(10), (11), or (12)”.

Subsec. (c)(2). Pub. L. 98-525, § 624(a)(3), substituted “(11)” for “(13)”.

1983—Subsec. (a)(12). Pub. L. 98-94 inserted “or the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used”.

1981—Subsec. (a). Pub. L. 97-60, § 111(a), inserted reference in cl. (10) to a ship other than an aircraft carrier from which aircraft are launched, and added cls. (11) to (13).

Subsec. (b). Pub. L. 97-60, § 111(b), amended table to reflect an upward adjustment in the monthly incentive pay.

Subsec. (c). Pub. L. 97-60, § 111(c), designated existing provisions as par. (1), inserted reference to cls. (11) and (12) of subsec. (a) of this section and substituted “\$83” for “\$55”, and added par. (2).

1980—Subsec. (a)(2). Pub. L. 96-579, § 3(a), redesignated cl. (4) as (2) and struck out former cl. (2) defining “hazardous duty” as including submarine duty. See section 301c(a)(5) of this title.

Pub. L. 96-513, § 516(5)(A), (B), in subcl. (B) substituted reference to subcl. (A) for reference to cl. (A), and in subcl. (B) substituted reference to subcl. (B) for reference to cl. (B).

Subsec. (a)(3). Pub. L. 96-579, § 3(a), redesignated cl. (5) as (3) and struck out former cl. (3) defining “hazardous duty” as including duty as an operator or crew member of an operational, self-propelled submersible, including undersea exploration and research vehicles. See section 301c(a)(5) of this title.

Subsec. (a)(4) to (12). Pub. L. 96-579, § 3(a), redesignated cls. (4) to (12) as (2) to (10), respectively.

Subsec. (b). Pub. L. 96-579, § 3(b), struck out par. (1) designation for provision relating to monthly flight in-

centive pay for enlisted members and struck out par. (2) relating to monthly incentive pay for commissioned officers, warrant officers, and enlisted members for hazardous duty as crew member involving frequent and regular participation in aerial flight, submarine duty, and duty as an operator or crew member of an operational, self-propelled submersible, including undersea exploration and research vehicles, now reflected as to enlisted members in currently upgraded scale in subsec. (b) table and covered in section 301c(b) table reflecting currently upgraded scale for submarine duty by enlisted members, commissioned officers, and warrant officers.

Pub. L. 96-343 redesignated existing provision as par. (2), substituted “(2) or (3)” for “(1), (2), or (3)”, and added par. (1).

Subsec. (c). Pub. L. 96-579, §3(c), inserted references to cls. (2) and (3) and struck out references to cls. (11) and (12) of subsec. (a) of this section.

Subsec. (f). Pub. L. 96-513, §516(5)(C), substituted reference to subsection (a) for reference to subsection (a)(1)–(12).

1974—Subsec. (a)(1). Pub. L. 93-294, §2(1), substituted “an enlisted crew member” for “a crew member”.

Subsec. (g). Pub. L. 93-294, §2(2), repealed subsec. (g) which required the Secretary of each military department to report to Congress before January 2 each year the number of officers of the Army, Navy, or Air Force, as the case may be, above the grade of major or lieutenant commander, by grade and age group, who were entitled to incentive pay under subsec. (a)(1) of this section. See section 301a of this title.

1972—Subsec. (a)(2)(A). Pub. L. 92-436 included in the hazardous duty for incentive pay of a member of a submarine operational command the application of hours served underway in excess of 48 during the preceding five calendar months and not used to qualify for incentive pay, to satisfy of underway time requirements for the current month.

1966—Subsec. (a)(2). Pub. L. 89-718 made only style changes by capitalizing letter designations for cls. “A”, “B”, and “C” and by setting off text following cl. C through the device of moving the margin to the left of the margin for the clauses.

1965—Subsec. (a)(2). Pub. L. 89-278 included duty as a member of a submarine operational command staff whose duties require serving on a submarine during underway operations for certain specified periods within term “hazardous duty”.

Subsec. (a)(12). Pub. L. 89-149, §1, added cl. (12).

Subsecs. (c), (f). Pub. L. 89-149, §§2, 3, inserted reference to cl. (12) of subsec. (a).

1963—Subsec. (a)(2). Pub. L. 88-132, §6, substituted “as determined by the Secretary concerned, on a submarine (including, in the case of nuclear-powered submarines, periods of training and rehabilitation after assignment thereto), or, in the case of personnel qualified in submarines, as a prospective crew-member of a submarine being constructed, and during periods of instruction to prepare for assignment to a submarine of advanced design or a position of increased responsibility on a submarine” for “on board a submarine, including, in the case of nuclear-powered submarines, periods of training and rehabilitation after assignment thereto as determined by the Secretary concerned, and including submarines under construction from the time builders’ trials begin”.

Subsec. (a)(9). Pub. L. 88-132, §7, substituted “inside a high- or low-pressure chamber” for “as a low-pressure chamber inside observer”.

Subsec. (e). Pub. L. 88-132, §8, substituted “not more than two payments” for “only one payment”.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 1111(d)(1) of Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1342(h)(1) of Pub. L. 99-661 provided that: “The amendments made by subsections (a) through (d) [amending this section and section 302 of this title and provisions set out as notes under sections 302b and 403a of this title] shall take effect on October 1, 1986, or the date of the enactment of this Act [Nov. 14, 1986], whichever is later.”

#### EFFECTIVE DATE OF 1985 AMENDMENT

Section 635(b) of Pub. L. 99-145 provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 1985.”

Section 647(b) of Pub. L. 99-145 provided that: “The amendments made by subsection (a) [amending this section] shall apply to payments of incentive pay for hazardous duty performed after September 30, 1985.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 903(b) of Pub. L. 98-94 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1983.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 111(d) of Pub. L. 97-60 provided that: “The amendments made by this section [amending this section] shall take effect as of October 1, 1981.”

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-579 effective Jan. 1, 1981, see section 3(g) of Pub. L. 96-579, set out as an Effective Date note under section 301c of this title.

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

Section 2(c) of Pub. L. 96-343 provided that: “The amendments made by this section [amending this section] shall be effective with respect to incentive pay payable for months after August 1980.”

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-294 effective June 1, 1974, see section 6 of Pub. L. 93-294, set out as an Effective Date note under section 301a of this title.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of this title.

#### PERSONS ENTITLED TO RECEIVE INCENTIVE PAY FOR DUTY INVOLVING CONTACT WITH PERSONS AFFLICTED WITH LEPROSY

Section 624(b) of Pub. L. 98-525 provided that: “A member of the uniformed services who is entitled on the day before the date of the enactment of this Act [Oct. 19, 1984] to receive incentive pay under section 301(a)(5) [subsec. (a)(5) of this section] (for the performance of duty involving intimate contact with persons afflicted with leprosy) shall continue to be entitled to such pay under such section as in effect on that day so long as the member continues (without a break) to be assigned to perform such duties on and after that day.”

#### EXECUTIVE ORDER NO. 10152

Ex. Ord. No. 10152, Aug. 17, 1950, 15 F.R. 5489, as amended by Ex. Ord. No. 10618, July 1, 1955, 20 F.R. 4671; Ex. Ord. No. 10681, Oct. 24, 1956, 21 F.R. 8129; Ex. Ord. No. 10739, Nov. 19, 1957, 22 F.R. 9205; Ex. Ord. No. 10892, Nov. 10, 1960, 25 F.R. 10731; Ex. Ord. No. 11120, Oct. 2, 1963, 28 F.R. 10631, which concerned regulations relating to incentive pay for performance of hazardous duty, was revoked by Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, set out below.

#### EX. ORD. NO. 11157. REGULATIONS RELATING TO INCENTIVE PAY, SPECIAL PAY, AND ALLOWANCES

Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, as amended by Ex. Ord. No. 11242, Aug. 28, 1965, 30 F.R.

11205; Ex. Ord. No. 11253, Oct. 20, 1965, 30 F.R. 13509; Ex. Ord. No. 11259, Dec. 3, 1965, 30 F.R. 15057; Ex. Ord. No. 11292, Aug. 1, 1966, 31 F.R. 10447; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 11424, Aug. 29, 1968, 33 F.R. 12361; Ex. Ord. No. 11473, June 14, 1969, 34 F.R. 9485; Ex. Ord. No. 11511, Feb. 27, 1970, 35 F.R. 3877; Ex. Ord. No. 11591, Apr. 23, 1971, 36 F.R. 7833; Ex. Ord. No. 11716, Apr. 26, 1973, 38 F.R. 10621; Ex. Ord. No. 11728, July 12, 1973, 38 F.R. 18861; Ex. Ord. No. 11897, Jan. 13, 1976, 41 F.R. 2071; Ex. Ord. No. 11929, July 26, 1976, 41 F.R. 31159; Ex. Ord. No. 11939, Sept. 30, 1976, 41 F.R. 43705; Ex. Ord. No. 12094, Nov. 1, 1978, 43 F.R. 51379; Ex. Ord. No. 12243, Oct. 3, 1980, 45 F.R. 66439; Ex. Ord. No. 12274, Jan. 16, 1981, 46 F.R. 5855; Ex. Ord. No. 12337, Jan. 11, 1982, 47 F.R. 1367, eff. Sept. 15, 1981; Ex. Ord. No. 12380, Aug. 18, 1982, 47 F.R. 36605, eff. Jan. 1, 1981; Ex. Ord. No. 12394, Nov. 18, 1982, 47 F.R. 52405, eff. Oct. 1, 1981; Ex. Ord. No. 12420, May 11, 1983, 48 F.R. 21525, eff. Oct. 1, 1981; Ex. Ord. No. 12488, Sept. 27, 1984, 49 F.R. 38525, eff. Oct. 1, 1983; Ex. Ord. No. 12494, Dec. 6, 1984, 49 F.R. 48175; Ex. Ord. No. 12541, Dec. 30, 1985, 51 F.R. 585, eff. Jan. 1, 1986; Ex. Ord. No. 12573, Nov. 6, 1986, 51 F.R. 40954, eff. in part Oct. 1, 1985; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 12762, June 4, 1991, 56 F.R. 25993; Ex. Ord. No. 12935, Oct. 28, 1994, 59 F.R. 54511, provided:

By virtue of the authority vested in me by sections 301(a) and (f), 305(a), 402(f), and 403(g) of title 37 of the United States Code, and as President of the United States and Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

#### PART I—INCENTIVE PAY FOR HAZARDOUS DUTY

SEC. 101. For the purposes of these regulations:

(a) The term "aerial flight" shall be construed to mean flight in an aircraft, glider, or spacecraft; and a flight shall be deemed to begin when the aircraft, glider, or spacecraft takes off from rest at any point of support located on the surface of the earth and to terminate when it next comes to a complete stop at a point of support located on the surface of the earth.

(b) The term "aviation accident" shall be construed to mean an accident in which a member who is required to participate frequently and regularly in aerial flight is injured or otherwise incapacitated as the result, as attested by the appropriate medical authority of the uniformed service concerned, of (1) jumping from, being thrown from or being struck by, an aircraft, glider, or spacecraft, or any part or auxiliary thereof, or (2) participation in any duly authorized aerial flight or other aircraft, glider, or spacecraft operations.

SEC. 102. Under such regulations as the Secretary concerned may prescribe, any member of the uniformed services, including members assigned to special, administrative, or school duties, may be required by competent orders to perform hazardous duty.

SEC. 103. (a) Each member who is required by competent orders to participate frequently and regularly in aerial flights, other than glider flights, shall make the flights required as a crew member or as a non-crew member as directed by competent authority.

(b) Determinations as to what constitutes duty as a crew member and duty as a non-crew member shall be made in accordance with regulations prescribed by the Secretary concerned: *Provided*, That such determinations shall be uniform for all the services to the fullest extent practicable.

SEC. 104. Under such regulations as the Secretary concerned may prescribe, members who are required by competent orders to participate frequently and regularly in aerial flights, other than glider flights, shall be required to meet the following minimum flight requirements, except as otherwise provided in section 110 hereof, in order to be entitled to receive monthly incentive pay for the performance of hazardous duty.

(a) Minimum flight requirements for members on active duty who may qualify for incentive pay under the provisions of section 301(a) of title 37, United States Code:

(1) During one calendar month: 4 hours of aerial flight; however, hours of aerial flight performed during the immediately preceding five calendar months and not already used to qualify for incentive pay may be applied to satisfy the aerial flight requirement for that month.

(2) During any two consecutive calendar months when the requirements of clause (1) above have not been met: 8 hours of aerial flight.

(3) During any three consecutive calendar months when the requirements of clause (2) above have not been met: 12 hours of aerial flight.

(4) For fractions of a calendar month, the time of aerial flight required shall bear the same ratio to the time required for a full calendar month as the period in question bears to a full calendar month.

(5) For fractions of two consecutive calendar months, the period in question shall be considered as a unit and the time of aerial flight required shall bear the same ratio to the time required for a full calendar month as the period in question bears to a full calendar month.

(6) Whenever, under authority conferred by the Secretary concerned, the commanding officer of any member who has been required by competent orders to participate frequently and regularly in aerial flights, other than glider flights, certifies that on account of military operations of the particular command or on account of the unavailability of aircraft such member was unable to perform the aerial flights required by this section, such member may comply with the minimum flight requirements by performing at least 24 hours of aerial flight over a period of six consecutive calendar months, and such requirements may be met at any time during such period.

(b) Minimum flight requirements for members of reserve components of the uniformed services on inactive-duty training who may qualify for incentive pay under the provisions of section 301(f) of title 37, United States Code:

(1) During one calendar month: 2 hours of aerial flight; however, hours of aerial flight performed during the immediately preceding five calendar months and not already used to qualify for incentive pay may be applied to satisfy the aerial flight requirement for that month.

(2) During any two consecutive calendar months, when the requirements of clause (1) above have not been met: 4 hours of aerial flight.

(3) During any three consecutive calendar months when the requirements of clause (2) above have not been met: 6 hours of aerial flight.

(4) For fractions of a calendar month, the time of aerial flight required shall bear the same ratio to the time required for a full calendar month as the period in question bears to a full calendar month.

(5) For fractions of two consecutive calendar months, the period in question shall be considered as a unit and the time of aerial flight required shall bear the same ratio to the time required for a full calendar month as the period in question bears to a full calendar month.

(c) Minimum flight requirements for members of reserve components of the uniformed services who perform both active-duty and inactive-duty training during the same calendar month and who may qualify for incentive pay under the provisions of both sections 301(a) and 301(f) of title 37 of the United States Code:

(1) For periods of active duty, those prescribed by clause (4) of subsection (a) of this section.

(2) For periods of inactive-duty training, those prescribed by clause (4) of subsection (b) of this section.

However, the total flight requirements as determined by clauses (1) and (2) of this subsection may be met at any time during such calendar month—

(i) on inactive-duty training, or

(ii) on active-duty and inactive-duty training, if the inactive-duty flight requirement for such month has been met.

SEC. 105. Members shall not be entitled to receive incentive pay for participation in aerial flights for any

period while suspended from such participation, unless such suspension is subsequently removed and the minimum flight requirements prescribed in section 104 hereof have been complied with, except as otherwise provided in section 110 and 114 hereof.

SEC. 106. (a) As determined by the Secretary of the Navy, a member who is entitled to basic pay, who holds or is in training leading to a submarine duty designator, and who is in and remains in the submarine service on a career basis, is entitled to continuous monthly submarine duty incentive pay, subject to the performance of the required number of years of operational submarine duty (37 U.S.C. 301c(a)(3)–(4)), except as provided by 37 U.S.C. 301c(c).

(b) As determined by the Secretary of the Navy, a member who is entitled to basic pay but is not entitled to continuous monthly submarine duty incentive pay is entitled to submarine duty incentive pay for any period during which such member performs frequent and regular operational submarine duty required by orders.

(c) To the extent provided for by appropriations, a member of the Naval Reserve who is entitled to compensation under Section 206 of Title 37 of the United States Code, and who performs, under orders, duty on a submarine during underway operations, is eligible for an increase in such compensation equal to one-thirtieth of the monthly submarine duty incentive pay for the performance of that duty by a member of a corresponding grade and years of service who is entitled to basic pay when those orders specify such increased entitlement. Such member is eligible for the increase for each day served, for as long as he is qualified for it, during each regular period of appropriate duty.

(d) The Secretary of the Navy is hereby designated and empowered to issue additional implementing regulations with respect to entitlement of regular and reserve officers and enlisted members of the Navy to submarine duty incentive pay, or continuous monthly submarine duty incentive pay.

SEC. 107. (a) Members who are qualified as glider personnel under such regulations as the Secretary concerned may prescribe, or who are undergoing training for such qualification, and who are required by competent orders to participate frequently and regularly in glider flights shall be required to perform one or more glider flights, without regard to duration thereof, during any three consecutive calendar months in order to be entitled to receive incentive pay for such period.

(b) Whenever, under authority conferred by the Secretary concerned, the commanding officer of any member who has been required by competent orders to participate frequently and regularly in glider flights certifies that on account of the absence or inadequacy of glider equipment or towing aircraft or other means of propulsion, or on account of military operations of the particular command, such member was unable to perform the glider flights required by this section, such member may comply with the minimum flight requirements by performing four or more glider flights, without regard to duration thereof, during a period of 12 consecutive calendar months, and such requirements may be met at any time during such period.

(c) Members of reserve components of the uniformed services who have complied with the requirement prescribed in this section shall be entitled to receive incentive pay for both active-duty and inactive-duty training performed during such period.

SEC. 108. (a) As used in section 301(a) of title 37 of the United States Code, the term “duty involving parachute jumping as an essential part of military duty” shall be construed to mean duty performed by members who, under such regulations as the Secretary concerned may prescribe, have received a rating as a parachutist or parachute rigger, or are undergoing training for such a rating, and who are required by competent orders to engage in parachute jumping from an aircraft in aerial flight.

(b) Members required by competent orders to engage in parachute jumping shall be required to perform one

or more parachute jumps from an airplane in flight during any three consecutive calendar months in order to be entitled to receive incentive pay for such period.

(c) Whenever, under authority conferred by the Secretary concerned, the commanding officer of any member who has been required by competent orders to participate in parachute jumping certifies that on account of the absence of jump equipment or aircraft or on account of military operations of the particular command such member was unable to make the jumps required by this subsection, such member may comply with the minimum requirements by performing four jumps during a period of 12 consecutive calendar months, and such requirements may be met at any time during such period. The minimum requirements may be waived by the commanding officer of a member for any period that the member is unable to perform the required jumps by reason of being engaged in combat operations in a hostile fire area designated under Section 310 of Title 37 of the United States Code.

(d) Members of reserve components of the uniformed services who have complied with requirements prescribed in this section shall be entitled to receive incentive pay for both active-duty and inactive-duty training performed during such period.

SEC. 109. As used in section 301(a) of title 37 of the United States Code—

(a) The term “duty involving intimate contact with persons afflicted with leprosy” shall be construed to mean duty performed by any member who is assigned by competent orders to a leprosarium for the performance of duty for a period of 30 days or more or for a period of instruction, whether or not such leprosarium is under the jurisdiction of one of the uniformed services.

(b) The term “duty involving the demolition of explosives” shall be construed to mean duty performed by members who, pursuant to competent orders and as a primary duty assignment (1) demolish by the use of explosives objects, obstacles, or explosives, or recover and render harmless, by disarming or demolition, explosives which have failed to function as intended or which have become a potential hazard; (2) participate as students or instructors in instructional training, including that in the field or fleet, for the duties described in clause (1) hereof, provided that live explosives are used in such training; (3) participate in proficiency training, including that in the field or fleet, for the maintenance of skill in the duties described in clause (1) hereof, provided that live explosives are used in such training; or (4) experiment with or develop tools, equipment, or procedures for the demolition and rendering harmless of explosives, provided that live explosives are used.

(c) The term “duty inside a high- or low-pressure chamber” shall be construed to mean duty performed within pressure chambers at physiological facilities by members assigned to that duty.

(d) The term “duty as human acceleration or deceleration experimental subject” shall be construed to mean duty performed by members exposed as human acceleration or deceleration experimental subjects utilizing experimental acceleration or deceleration devices.

(e) The term “duty as human test subject in thermal stress experiments” shall be construed to mean duty performed by members exposed as human thermal experimental subjects in thermal stress experiments conducted under the supervision of any laboratory designated by the Secretary concerned.

(f) The term “duty involving frequent and regular participation in flight operations on the flight deck of an aircraft carrier or of a ship other than an aircraft carrier from which aircraft are launched” shall be construed to mean duty performed by members who are designated for and ordered to such duty by competent authority from among the crew of a ship from which aircraft are launched or an aviation unit operating from that type of ship, and who, in any calendar month (1) participate in flight operations on the flight deck

during a minimum of four days, or (2) participate, on the flight deck, in a minimum number of aircraft launches or recoveries, or both, that is prescribed by the Secretary concerned as the equivalent of participation under clause (1). No member shall be entitled, however, to receive the pay provided for in this subsection if, during any month or portion thereof, he is also eligible to receive incentive pay for other hazardous duty under the provisions of Section 301 of Title 37, United States Code.

(g) The term "duty involving the servicing of aircraft or missiles with highly toxic fuels or propellants or the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used" shall be construed to mean duty performed by members as a primary duty that requires (1) removal, replacement, and servicing of the emergency power unit of an aircraft with H-70 propellant (30 percent water, 70 percent hydrazine); (2) participation by those personnel performing duties described in (g)(1) who must also participate in an emergency response force, spill containment, or spill cleanup involving H-70 propellant (30 percent water, 70 percent hydrazine); (3) handling and maintaining the liquid propellants (liquid oxidizer-nitrogen tetroxide; unsymmetrical dimethyl hydrazine) used in the Titan weapon system, if such duty requires qualification in the use of the Rocket Fuel Handler's Clothing Outfit and involves (A) launch duct operations, including flow, pressurization, on-load, set-up or tear down involving propellant transfer operations; (B) set-up, installation or tear down for fuel/oxidizer flow; (C) decontamination of equipment, including, but not limited to, the Rocket Fuel Handler's Clothing Outfit; (D) venting or pressurizing missile fuel or oxidizer tanks; (E) removing or replacing missile components while missile fuel and oxidizer tanks are loaded with such propellants; (F) transferring propellants between commercial and military holding trailers, or between holding trailers and fuel/oxidizer pump rooms; or normal preventive maintenance activities including, but not limited to, seal changes; (4) handling and maintaining the propellants, unsymmetrical dimethyl hydrazine and inhibited red-fuming nitric acid, used in the LANCE missile system; (5) handling, transporting or working with toxic fuels/propellants by members assigned to the Air Force Rocket Propulsion Lab (AFRPL) who (A) directly manage and inspect the activities of crew members conducting operations involving experimental rocket propulsion systems and components; (B) directly monitor and set up measurement instruments in operational areas where contamination is suspected or may be physically present; (C) install and remove instrumentation devices from propulsion systems and components; (D) perform final test preparation and immediate safety inspection duties around pressurized, active systems during prerun and postrun test periods; or, (E) install and repair electrical systems; (6) handling, loading/unloading and transporting toxic fuels and oxidizers at the precision sled track while working with the liquid rocket sled, which uses JP-X (a mixture of jet fuel (JP-4) and unsymmetrical dimethyl hydrazine) and red-fuming nitric acid and a propulsion; or (7) involvement with other toxic substances contained in missile or aircraft weapon system fuels or propellants as determined by the Secretary concerned. The entitlement to the pay provided for in this subsection is based upon the performance of such duty which has the potential for accidental or inadvertent exposure to highly toxic fuels or propellants or related substances and not upon actual quantifiable exposure to such substances. Therefore, neither this construction of the term nor the receipt of the pay provided for in this subsection may be construed as indicating that any person entitled to such pay has been actually exposed to highly toxic fuels or propellants or related substances contrary to the provisions of any statute, Executive order, rule, or regulation relating to health or safety which is applicable to the uniformed services.

(h) The term "duty involving frequent and regular exposure to highly toxic pesticides" shall be construed to mean duty performed by members who, while under competent orders assigning such members to the entomology, pest control, pest management, or preventive medicine functions of a uniformed service for a period of 30 consecutive days or more, are required to perform in any calendar month a fumigation task utilizing (1) phosphine, sulfuryl fluoride, hydrogen cyanide, methyl bromide, or (2) a fumigant of comparable high acute toxicity and hazard potential. The use of solid fumigant formulations, such as aluminum phosphide, magnesium phosphide and calcium cyanide, in the outdoor control of burrowing animals does not qualify a member for incentive pay under this subsection.

(i) The term "duty involving laboratory work that utilizes live dangerous viruses or bacteria" shall be construed to mean primary duty performed by members who work with micro-organisms (1) that cause disease (A) with a high potential for mortality, and (B) for which effective therapeutic procedures are not available, and (2) for which no effective prophylactic immunization exists, while such members are assigned by competent orders for a period of 30 consecutive days or more to participate in or conduct applied or basic research that is characterized by a changing variety of techniques, procedures, equipment, and experiments.

(j) The term "the handling of chemical munitions (or components of such munitions)" shall be construed to mean duty performed by members as a primary duty which routinely requires (1) direct physical handling of toxic chemical munitions incident to storage, maintenance, testing, surveillance, assembly, disassembly, demilitarization, or disposal of said munitions; (2) direct physical handling of chemical surety material, as defined by the Secretary concerned, incident to manufacture, storage, testing, laboratory analysis, detoxification, or disposal of said material; (3) direct physical handling of toxic chemical munitions incident to technical escort of shipments of said munitions; (4) direct physical handling of chemical surety material, as defined by the Secretary concerned incident to technical escort of shipments of said material. The term does not include the handling of the individual components of binary chemical agents or munitions. The term does not include user handling incident to loading, firing, or otherwise launching the toxic chemical munitions nor field storage operations during hostilities. The term also excludes the handling of Research, Development, Testing and Evaluation Dilute Solutions of toxic chemicals as defined by the Secretary concerned. It also excludes the handling of riot control agents, chemical defoliants and herbicides, smoke, flame and incendiaries, and industrial chemicals. The entitlement to the pay provided for in this subsection is based upon the performance of such duty that has the potential for accidental exposure to chemical agents and not upon actual quantifiable exposure to such agents. Therefore, neither the construction of the term nor the receipt of pay provided for in this subsection may be construed as indicating that any person entitled to such pay actually has been exposed to chemical agents contrary to the provisions of any statute, executive order, rule, or regulations relating to the health and safety which is applicable to the uniformed services.

SEC. 110. Any member who is required by competent orders to perform hazardous duty, or multiple hazardous duties, and who becomes injured or otherwise incapacitated as a result of the performance of any such hazardous duty, by aviation accident or otherwise, shall be deemed to have fulfilled all of the requirements for the performance of all hazardous duties which he is required by competent orders to perform, for a period not to exceed three months following the date as of which such incapacity is determined by the appropriate medical authority.

SEC. 111. Members required by competent orders to perform hazardous duty shall, upon compliance with the requirements of these regulations, be entitled to re-

ceive incentive pay during authorized leaves of absence.

SEC. 112. Under such regulations as the Secretary concerned may prescribe, a member who performs multiple hazardous duties under competent orders may be paid not more than two payments of incentive pay for a period of time during which he qualifies for more than one such payment. Dual payments of incentive pay shall be limited to those members who are required by competent orders to perform specific multiple hazardous duties in order to carry out their assigned missions.

SEC. 113. The Secretaries concerned are hereby authorized to prescribe such supplementary regulations not inconsistent herewith as they may deem necessary or desirable for carrying out these regulations, and such supplementary regulations shall be uniform for all the services to the fullest extent practicable.

SEC. 114. Under such regulations as the Secretary of Defense and the Secretary of Transportation may prescribe with respect to enlisted members within their respective jurisdictions, any enlisted member who has been required by competent orders to perform duty as a crew member involving frequent and regular participation in aerial flight shall, if he is involuntarily removed from the performance of that duty, under circumstances prescribed by such regulations with less than 120 days' advance notice, be deemed to have fulfilled all of the requirements for payment of incentive pay under section 301(a)(1) or (f) of title 37 of the United States Code, for that duty for up to 120 days after the date on which he was notified of such removal.

#### PART II—SPECIAL PAY FOR SEA DUTY AND DUTY AT CERTAIN PLACES

SEC. 201. (a) The following members of a uniformed service who are entitled to receive basic pay shall be entitled to receive, additionally, career sea pay while on sea duty:

- (1) enlisted members who are in pay grade E-4 or above,
- (2) warrant officers,
- (3) commissioned officers in pay grade O-3 or above who have over three years of sea duty, and
- (4) commissioned officers in pay grades O-1 and O-2 with at least four years active service as enlisted members or as noncommissioned warrant officers and over three years of sea duty.

(b) The period of sea duty shall include the date of reporting and the date of detachment as stated in orders. Career sea pay shall be at the rates prescribed in Section 305a of Title 37 of the United States Code.

SEC. 202. A member of a uniformed service who is entitled to career sea pay and who has served 36 consecutive months of sea duty as such period is computed under regulations of the Secretary concerned, is entitled to a monthly career sea pay premium for the thirty-seventh consecutive month and each subsequent consecutive month of sea duty service by such member when such member is entitled to career sea pay. In the regulations published by the Secretary concerned, the term "consecutive months of sea duty" may be defined to include periods during which a member is serving in or under orders to duties, service in which qualifies the member for career sea pay, either periodically or continuously during assignment to such duties. Examples of such periods are periods of service as a member of a two crewed submarine or fleet aviation units assigned to ships, or periods for training, hospitalization, or other periods of a similar nature.

SEC. 203. The Secretaries concerned (within the meaning of section 101(5) of title 37, United States Code) with respect to personnel of the uniformed service within their respective departments, are hereby authorized to prescribe such supplementary regulations, not inconsistent herewith, as they may deem necessary or desirable for carrying out the provisions of sections 305 and 305a of title 37 and this Executive Order. Such regula-

tions shall be uniform for all the services to the fullest extent possible.

SEC. 204. Enlisted members entitled to receive basic pay shall be entitled to receive, additionally, pay at the rates prescribed by section 305(a) of title 37 of the United States Code while on duty at places that are outside the 48 contiguous States and the District of Columbia and that are designated for this purpose by the Secretary of Defense or, in the case of enlisted members of the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation. Subject to provisions of section 305 of title 37 of the United States Code, an enlisted member who is permanently assigned to duty at a place so designated is entitled to receive that pay during a period of authorized leave, temporary additional duty, temporary duty, or hospitalization or while on an operational aircraft flight, but not more than 30 days while he is away from that place. Enlisted members shall be entitled to special pay under this section when attached to ships undergoing repair and overhaul in designated foreign-duty areas for extended periods when entitlement to special pay for sea duty has been terminated. Such enlisted members shall be entitled to special pay for sea duty under the same conditions as an enlisted member on temporary additional duty or temporary duty in that designated foreign-duty area.

SEC. 205. Unless otherwise entitled to special pay in accord with the second sentence of section 204 hereof, during periods spent on temporary additional duty or temporary duty or on operational aircraft flights, pay in accord with section 204 shall accrue to enlisted members only for periods of eight continuous days or more in duration at one or more places designated, including the dates of arrival at and the dates of departure from those places.

SEC. 206. (a) No enlisted member shall be entitled under this order to receive both career sea pay and pay for duty prescribed in sections 204 and 205 hereof for the same period of time.

(b) [Deleted by Ex. Ord. No. 12274, Jan. 16, 1981, 46 F.R. 5855]

#### PART III—BASIC ALLOWANCES FOR SUBSISTENCE

SEC. 301. Enlisted members who are being subsisted in kind in a mess and whose duties require them to be absent from their station during one or more meals shall be entitled for each such meal to a prorated share of the daily basic allowance for subsistence authorized for members on duty at stations where rations in kind are not available. The Secretary of Defense, the Secretary of Transportation, and the Secretary of Commerce are hereby authorized to establish the amount of the prorated share of the daily basic allowance for subsistence applicable to each one of the three daily meals, which amount shall be uniform for all the services concerned. The total of the amounts of the shares for the three daily meals shall not exceed the amount of the basic daily allowance for subsistence authorized by section 402 of title 37 of the United States Code.

SEC. 302. The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, and the Secretary of Health and Human Services with respect to the personnel of the uniformed services within their respective agencies, are hereby authorized, subject to the provisions of section 303 hereof, to prescribe such supplemental regulations, inconsistent herewith, as they may deem necessary or desirable for carrying out the provisions of this part and of the said section 402 of title 37 of the United States Code: *Provided*, That such regulations shall be uniform so far as practicable for all the services concerned.

SEC. 303. As used in regulations prescribed pursuant to section 302 hereof, those terms of the said section 402 of title 37 of the United States Code which are quoted in the subsections of this section shall have the meaning or application stated with respect thereto:

(a) The term "entitled to receive basic pay" shall be considered applicable to members while they are on the



active list or while they are required to perform duty in accordance with law for which they are entitled to basic pay: *Provided*, that such term shall not be applicable to any member while absent from duty under conditions which, under laws governing the particular service concerned, would prevent him from receiving full basic pay.

(b) The term “when rations in kind are not available” shall be considered applicable in the case of enlisted members on duty at stations where it is determined, in accordance with regulations prescribed pursuant to section 302 hereof, that it is impracticable for subsistence in kind to be furnished by the United States.

(c) The term “when permission to mess separately is granted” shall be considered applicable in the case of enlisted members on duty at stations or while sick in hospitals where a mess for subsisting enlisted members is available and when such enlisted members are authorized to subsist themselves independently. Such term shall also be considered applicable in the case of enlisted members during all periods of authorized leave, including periods of leave or delay while en route between duty stations.

(d) The term “when assigned to duty under emergency conditions where no messing facilities of the United States are available” shall be considered applicable in the case of enlisted members assigned to duty under conditions requiring extraordinary expenses for subsistence as determined in accordance with regulations prescribed pursuant to section 302 hereof.

(e) The term “field duty” for purposes of the third sentence of subsection (b) of Section 402 of Title 37, United States Code, shall mean service by a member when the member is subsisted in a Government mess or with an organization drawing field rations, and the member is serving with troops on maneuvers, war games, field exercises, or similar types of operations.

(f) The term “sea duty” for purposes of the third sentence of subsection (b) of Section 402 of Title 37, United States Code, shall mean service performed by a member in a self-propelled vessel that is in an active status, in commission or in service and is equipped with berthing and messing facilities.

#### PART IV—BASIC ALLOWANCE FOR QUARTERS

SEC. 401. As used in this part:

(a) The term “entitled to receive basic pay” shall apply to a member while on the active list or while required to perform duty in accordance with law for which he is entitled to basic pay: *Provided*, That such term shall not apply to any member while absent from duty under conditions which, under laws governing the particular service concerned, would prevent him from receiving full basic pay.

(b) The term “field duty” shall mean service with troops on maneuvers, war games, field exercises, or similar types of operations.

(c) The term “sea duty” shall mean service performed by either an officer or enlisted member in a self-propelled vessel that is in an active status, in commission or in service and is equipped with berthing and messing facilities. Duty for less than three months is not considered to be sea duty. Duty for more than three months under temporary orders which provide for return to the member's same permanent station is not considered sea duty.

(d) The term “permanent station” shall mean the place on shore where a member is assigned to duty, or the home yard or the home port of a ship in which a member is required to perform duty, under orders in each case which do not in terms provide for the termination thereof; and any station on shore or any receiving ship where a member is assigned and in fact occupies, with his dependents, if any, quarters under the jurisdiction of any of the uniformed services shall also be deemed during such occupancy to be his permanent station: *Provided*, That in the case of members of the National Guard, the Air National Guard or reserve compo-

nents of any of the uniformed services on active duty for training, the place where the training duty is being performed shall be deemed to be the permanent station of such members for the purposes of these regulations.

(e) The term “deployed” shall apply to time during which the unit is at sea or in a port more than 50 miles from its home port; provided, however, time during which the unit is in a port for overhaul or extended repairs is not to be considered deployed time. Unanticipated overhauls or extended repairs which occur during a period scheduled as extended deployment in the mission assignment of the ship is time deployed unless otherwise classified by appropriate command authority.

(f) [Deleted by Ex. Ord. No. 12541, Dec. 30, 1985, 51 F.R. 585]

SEC. 402. Except as otherwise by statute heretofore or hereafter provided, a member shall be entitled to payment of basic allowances for quarters, in accordance with these regulations and any regulations prescribed pursuant hereto, during such time or times as he is entitled to receive basic pay.

SEC. 403. (a) Any quarters of housing facilities under the jurisdiction of any of the uniformed services in fact occupied without payment of rental charges (1) by a member and his dependents, or (2) by a member without dependents, or (3) by the dependents of a member on field duty or on sea duty or on duty at a station where adequate quarters are not available for his dependents, shall be deemed to have been assigned to such member as appropriate and adequate quarters, and no basic allowance for quarters shall accrue to such member under such circumstances unless the occupancy (A) occurs while such member is in a duty or leave status incident to a change of permanent station and is of a temporary nature under standards prescribed by regulations issued by the Secretary of Defense in the case of members of the Army, Navy, Air Force, or Marine Corps, and the reserve components thereof, or by the appropriate Secretary in the case of members of the other uniformed services, or (B) occurs while such member is in a duty or leave status not incident to a change of permanent station and does not exceed thirty consecutive days at one location: *Provided*, That occupancy of quarters under such circumstances for a period in excess of such 30-day period or such other temporary period as may be authorized under standards prescribed by regulations issued by the Secretary concerned shall not result in a forfeiture of basic allowance for quarters for such 30-day or other authorized period: *Provided*, further, That this paragraph shall not apply to occupancy of quarters as a guest of another member.

(b) Whenever the President exercises his authority under Section 1009(c) of Title 37 of the United States Code, to allocate up to 25 percent of certain increases in basic pay to basic allowances for quarters, a member without dependents who, under Section 403(b) or (c) of that title, is not entitled to a basic allowance for quarters shall become entitled to a portion of such basic allowance for quarters. The amount of such partial basic allowance for quarters shall equal the amount of any increases in basic pay which are allocated by the President to the basic allowance for quarters.

(c) For purposes of Section 403 of Title 37 of the United States Code, a member shall be deemed to be living in a “high housing cost area” whenever the average monthly cost of housing, including utilities, for housing appropriate for the member's grade, exceeds 115 percent of the amount of the basic allowance for quarters of that member.

(d) During fiscal year 1981, members may be paid variable housing allowance as permitted by Section 4(c) of the Military Personnel and Compensation Amendments of 1980 (94 Stat. 1125; Public Law 96-343; 37 U.S.C. 403 note); a member shall be deemed to be living in a “high housing cost area” whenever the estimated average monthly cost of housing, including utilities, appropriate for the member's grade, exceeds 115 percent of

the amount of the basic allowance for quarters of that member.

SEC. 404. When adequate quarters for his dependents are not available for assignment at his permanent station to a member with dependents, he may occupy quarters of the United States designated for members without dependents without affecting his right to receive payment of basic allowances for quarters, if permitted or required to occupy quarters at such station. Under such circumstances, a member may not occupy quarters of the United States which exceed the minimum standards for members of his grade without dependents, as prescribed by the Secretary concerned, unless the only quarters available (a) exceed the minimum standards, and (b) are made available for joint occupancy with other members.

SEC. 405. A member away from his permanent station may occupy quarters of the United States designated for members without dependents at his temporary duty station without affecting his right to receive payment of basic allowances for quarters or assignment of quarters, if any, at his permanent station. Under such circumstances, a member may not occupy quarters of the United States which exceed the minimum standards for members of his grade without dependents, as prescribed by the Secretary concerned, unless the only quarters available (a) exceed the minimum standards, and (b) are made available for joint occupancy with other members.

SEC. 406. A member serving outside the United States, its territories, or possessions in a duty assignment which has official or diplomatic responsibilities involving officials of foreign governments may be assigned quarters in excess of the minimum standards set forth in sections 404 and 405 hereof, as prescribed by the Secretary concerned: *Provided*, That no such quarters shall be available on a continuous basis for single occupancy, if such quarters are otherwise adequate for assignment as family housing to members of similar rank.

SEC. 407. The Secretaries concerned (within the meaning of section 101(5) of title 37 of the United States Code), with respect to personnel of the uniformed services within their respective departments, are hereby authorized to prescribe such supplementary regulations not inconsistent herewith as they may deem necessary or desirable for carrying out these regulations, and such supplementary regulations shall be uniform for all the services to the fullest extent practicable.

#### PART V—GENERAL PROVISIONS

SEC. 501. For the purpose of these regulations, the terms defined in sections 101 and 401 of title 37 of the United States Code shall have the meanings prescribed therein.

SEC. 502. The following Executive orders are revoked:

- (a) Executive Order No. 10119 of March 27, 1950.
- (b) Executive Order No. 10152 of August 17, 1950.
- (c) Executive Order No. 10168 of October 11, 1950.
- (d) Executive Order No. 10204 of January 15, 1951.
- (e) Executive Order No. 10605 of April 22, 1955.
- (f) Executive Order No. 10618 of June 28, 1955.
- (g) Executive Order No. 10681 of October 22, 1956.
- (h) Executive Order No. 10739 of November 15, 1957.
- (i) Executive Order No. 10821 of May 20, 1959.
- (j) Executive Order No. 10892 of November 8, 1960.
- (k) Executive Order No. 10989 of January 22, 1962.
- (l) Executive Order No. 11120 of October 2, 1963.
- (m) Executive Order No. 11146 of March 13, 1964.

#### CROSS REFERENCES

Prohibition against receiving special pay for diving duty and incentive pay simultaneously, see section 304 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 552, 907, 1012 of this title.

#### § 301a. Incentive pay: aviation career

(a)(1) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to aviation career incentive pay in the amount set forth in subsection (b) for the frequent and regular performance of operational or proficiency flying duty required by orders.

(2) Aviation career incentive pay shall be restricted to regular and reserve officers who hold, or are in training leading to, an aeronautical rating or designation and who engage and remain in aviation service on a career basis.

(3) Under regulations prescribed by the Secretary of Defense, the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or the Secretary of Commerce and the Secretary of Health and Human Services with respect to members under their respective jurisdiction, an officer (except a flight surgeon or other medical officer) who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is entitled to continuous monthly incentive pay in the amount set forth in subsection (b) that is applicable to him. A flight surgeon or other medical officer who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is not entitled to continuous monthly incentive pay but is entitled to monthly incentive pay in the amounts set forth in subsection (b) for the frequent and regular performance of operational flying duty.

(4) To be entitled to continuous monthly incentive pay, an officer must perform the prescribed operational flying duties (including flight training but excluding proficiency flying) for 9 of the first 12, and 12 of the first 18 years of the aviation service of the officer. However, if an officer performs the prescribed operational flying duties (including flight training but excluding proficiency flying) for at least 10 but less than 12 of the first 18 years of the aviation service of the officer, the officer will be entitled to continuous monthly incentive pay for the first 22 years of the officer's service as an officer. Entitlement to continuous monthly incentive pay ceases for an officer (other than a warrant officer) upon completion of 25 years of service as an officer (as computed under section 205 of this title), but such an officer in a pay grade below pay grade O-7 remains entitled to monthly incentive pay under subsection (b)(1) for the performance of operational flying duty.

(5) If upon completion of either 12 or 18 years of aviation service it is determined that an officer has failed to perform the minimum prescribed operational flying duty requirements during the prescribed periods of time, his entitlement to continuous monthly incentive pay ceases. For the needs of the service, the Secretary concerned may permit, on a case by case basis, an officer to continue to receive continuous monthly incentive pay despite the failure of the officer to perform the prescribed operational